

AO 242 (12/11) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

UNITED STATES DISTRICT COURT

for the

RECEIVED

AUG 18 2022

AT 8:30 \_\_\_\_\_ M  
WILLIAM T. WALSH  
CLERK

Case No. 21-065382  
(Supplied by Clerk of Court)

Shahid Sharif  
Petitioner

v.

Director Aviles  
Respondent

(name of warden or authorized person having custody of petitioner)

PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

Personal Information

1. (a) Your full name: Shahid B Sharif  
(b) Other names you have used: \_\_\_\_\_
2. Place of confinement:  
(a) Name of institution: Hudson County Jail  
(b) Address: 30 Huchensack Avenue, Kearny, NJ, 07032  
(c) Your identification number: (354824)
3. Are you currently being held on orders by:  
☐ Federal authorities ☒ State authorities ☐ Other - explain: \_\_\_\_\_
4. Are you currently:  
☒ A pretrial detainee (waiting for trial on criminal charges)  
☐ Serving a sentence (incarceration, parole, probation, etc.) after having been convicted of a crime  
If you are currently serving a sentence, provide:  
(a) Name and location of court that sentenced you: \_\_\_\_\_  
(b) Docket number of criminal case: 21-065382  
(c) Date of sentencing: \_\_\_\_\_  
☐ Being held on an immigration charge  
☐ Other (explain): \_\_\_\_\_

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**Decision or Action You Are Challenging**

5. What are you challenging in this petition:

- ☐ How your sentence is being carried out, calculated, or credited by prison or parole authorities (for example, revocation or calculation of good time credits)
- ☒ Pretrial detention
- ☐ Immigration detention
- ☐ Detainer
- ☐ The validity of your conviction or sentence as imposed (for example, sentence beyond the statutory maximum or improperly calculated under the sentencing guidelines)
- ☐ Disciplinary proceedings
- ☐ Other (explain): \_\_\_\_\_

6. Provide more information about the decision or action you are challenging:

- (a) Name and location of the agency or court: Union County (New Jersey)  
Prosecutor's Office
- (b) Docket number, case number, or opinion number: 21-065382
- (c) Decision or action you are challenging (for disciplinary proceedings, specify the penalties imposed):  
the timing and filing of an indictment also the return  
of an indictment, substantive and procedural due process
- (d) Date of the decision or action: \_\_\_\_\_

**Your Earlier Challenges of the Decision or Action**7. **First appeal**

Did you appeal the decision, file a grievance, or seek an administrative remedy?

- ☐ Yes ☒ No

(a) If "Yes," provide:

- (1) Name of the authority, agency, or court: \_\_\_\_\_
- (2) Date of filing: \_\_\_\_\_
- (3) Docket number, case number, or opinion number: \_\_\_\_\_
- (4) Result: \_\_\_\_\_
- (5) Date of result: \_\_\_\_\_
- (6) Issues raised: \_\_\_\_\_

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(b) If you answered "No," explain why you did not appeal: \_\_\_\_\_

this would be my first time filing on Habeas corpus**8. Second appeal**

After the first appeal, did you file a second appeal to a higher authority, agency, or court?

☐ Yes☒ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: \_\_\_\_\_

(2) Date of filing: \_\_\_\_\_

(3) Docket number, case number, or opinion number: \_\_\_\_\_

(4) Result: \_\_\_\_\_

(5) Date of result: \_\_\_\_\_

(6) Issues raised: \_\_\_\_\_

(b) If you answered "No," explain why you did not file a second appeal: \_\_\_\_\_

This would be my first time filing a Habeas corpus**9. Third appeal**

After the second appeal, did you file a third appeal to a higher authority, agency, or court?

☐ Yes☒ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: \_\_\_\_\_

(2) Date of filing: \_\_\_\_\_

(3) Docket number, case number, or opinion number: \_\_\_\_\_

(4) Result: \_\_\_\_\_

(5) Date of result: \_\_\_\_\_

(6) Issues raised: \_\_\_\_\_

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(b) If you answered "No," explain why you did not file a third appeal:

This will be my first time filing a writ of Habeas corpus

10. **Motion under 28 U.S.C. § 2255**

In this petition, are you challenging the validity of your conviction or sentence as imposed?

☐ Yes ☒ No

If "Yes," answer the following:

(a) Have you already filed a motion under 28 U.S.C. § 2255 that challenged this conviction or sentence?

☐ Yes ☒ No

If "Yes," provide:

(1) Name of court: \_\_\_\_\_

(2) Case number: \_\_\_\_\_

(3) Date of filing: \_\_\_\_\_

(4) Result: \_\_\_\_\_

(5) Date of result: \_\_\_\_\_

(6) Issues raised: \_\_\_\_\_

(b) Have you ever filed a motion in a United States Court of Appeals under 28 U.S.C. § 2244(b)(3)(A), seeking permission to file a second or successive Section 2255 motion to challenge this conviction or sentence?

☐ Yes ☒ No

If "Yes," provide:

(1) Name of court: \_\_\_\_\_

(2) Case number: \_\_\_\_\_

(3) Date of filing: \_\_\_\_\_

(4) Result: \_\_\_\_\_

(5) Date of result: \_\_\_\_\_

(6) Issues raised: \_\_\_\_\_

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- (c) Explain why the remedy under 28 U.S.C. § 2255 is inadequate or ineffective to challenge your conviction or sentence: \_\_\_\_\_

11. **Appeals of immigration proceedings**

Does this case concern immigration proceedings?

☐ Yes

☒ No

If "Yes," provide:

- (a) Date you were taken into immigration custody: \_\_\_\_\_
- (b) Date of the removal or reinstatement order: \_\_\_\_\_
- (c) Did you file an appeal with the Board of Immigration Appeals?

☐ Yes

☐ No

If "Yes," provide:

- (1) Date of filing: \_\_\_\_\_
- (2) Case number: \_\_\_\_\_
- (3) Result: \_\_\_\_\_
- (4) Date of result: \_\_\_\_\_
- (5) Issues raised: \_\_\_\_\_

- (d) Did you appeal the decision to the United States Court of Appeals?

☐ Yes

☒ No

If "Yes," provide:

- (1) Name of court: \_\_\_\_\_
- (2) Date of filing: \_\_\_\_\_
- (3) Case number: \_\_\_\_\_

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- (4) Result: \_\_\_\_\_
- (5) Date of result: \_\_\_\_\_
- (6) Issues raised: \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

12. **Other appeals**

Other than the appeals you listed above, have you filed any other petition, application, or motion about the issues raised in this petition?

☐ Yes ☒ No

If "Yes," provide:

- (a) Kind of petition, motion, or application: \_\_\_\_\_
- (b) Name of the authority, agency, or court: \_\_\_\_\_
- \_\_\_\_\_
- (c) Date of filing: \_\_\_\_\_
- (d) Docket number, case number, or opinion number: \_\_\_\_\_
- (e) Result: \_\_\_\_\_
- (f) Date of result: \_\_\_\_\_
- (g) Issues raised: \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

**Grounds for Your Challenge in This Petition**

13. State every ground (reason) that supports your claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

**GROUND ONE:** My Constitutional rights have been violated substantively and procedurally, my (6th) Amendment Constitutional right that guarantees me the right to a Speedy trial has been violated also my (14th) Amendment State Constitutional right has been violated that guarantees me the right to (due process).



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(a) Supporting facts (Be brief. Do not cite cases or law.):

I have been incarcerated since (May 23rd, 2021) which have been (17) months and the State have just recently indicted me in (September 2021) I had signed for a plea of a (3 year sentence) with a (1 year ~~probation~~ stipulation) as an pre indictment plea. In (November 2021) the State announce they were taking the plea back and (June, 2022) the plea was taking back so they knew there intentions when they took the plea back so what was the delay for indicting me.

(b) Did you present Ground One in all appeals that were available to you?

☐ Yes☒ No**GROUND TWO:**

(a) Supporting facts (Be brief. Do not cite cases or law.):

(b) Did you present Ground Two in all appeals that were available to you?

☐ Yes☒ No**GROUND THREE:**

(a) Supporting facts (Be brief. Do not cite cases or law.):

(b) Did you present Ground Three in all appeals that were available to you?

☐ Yes☒ No

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**GROUND FOUR:**

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

(b) Did you present Ground Four in all appeals that were available to you?

☐ Yes

☒ No

14. If there are any grounds that you did not present in all appeals that were available to you, explain why you did not:

**Request for Relief**

15. State exactly what you want the court to do: I want that all charges and indictments should be dismissed with prejudice, also I should be released immediately without any delay, also there should be disciplinary actions towards the prosecutor's office and they should not be giving any type of immunity because when they took the plea offer back they knew their intentions, so there shouldn't have been any delay in indicting me or commencing a trial.



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**Declaration Under Penalty Of Perjury**

If you are incarcerated, on what date did you place this petition in the prison mail system:

8-15-22

I declare under penalty of perjury that I am the petitioner, I have read this petition or had it read to me, and the information in this petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury.

Date:

8-15-22

Shahid Shauq

*Signature of Petitioner*

\_\_\_\_\_  
*Signature of Attorney or other authorized person, if any*

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Writ of Habeas Corpus Continuance

I have been incarcerated now for (15) months and the State has just reached an indictment, which is an substantial violation of my (Due process rights) substantively also procedurally. My (6th) Amendment constitutional right that guarantees me the right to a (Speedy trial) has been violated, also my (14th) State constitutional right that guarantee me the right to (Due process), has been violated. There hasn't been any reason for delay in indicting me in the time frame in which the prosecutor did. Nor good cause was never shown. (Rules Governing The Courts of The State of New Jersey) (Rule 3:25 dismissal) rule (3:25-3 dismissal for delay) states that if there is an unreasonable delay in presenting the charge to the grand jury, or filing an accusation against a defendant who has been held to answer upon a complaint, the assignment judge or assignment judges designee, may dismiss the matter on motion of the defendant. The delay has been nothing but unreasonable also the grand jury has been in session since <sup>May</sup> ~~March~~ 2021. (on failing to indict) If the prosecutor needed to extend the time because they failed to indict me, the prosecutor was suppose to file a notice of motion accompanied by a brief, with an explanation, of the reasons for delay that justify the extension of time for the return of an indictment.

The time and motion to extend the time to return an indictment shall be filed with the courts, and served upon the defendant and the and the defense counsel, by the



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Writ of Habeas Corpus Continuance

The prosecutor no later than (15) calendar days prior to the expiration of the (90) day time frame, requested for excludable time calculated upon good cause shown the deadline may be relaxed. I was never served a motion by the prosecutor to extend time which deprived me of my right to object within (5) calendar days of the receipt of the prosecutor's motion to extend the time to return an indictment. I had an right to object the prosecutor's motion and request oral argument, I have never got the chance to assert my right.

The prosecutor had (90) days to indict and (180) days to bring me to trial, the same procedures would have to take place on the prosecutor's behalf, (on failure to commence trial).

The courts shall keep track of each and every instance of excludable time calculated pursuant to this rule, including the number of days excluded as determined by the Judge, and ensure that all excludable time is accurately reflected in an appropriate Judiciary Case management System. The courts shall provide notice to the defendant and prosecutor of the (Impending) release date, which is also known as my (Speedy trial release date), for the defendant at least (20) days prior to that release date (the courts has failed to do and follow the rules of the courts). Counsel shall also keep track of excludable time and pending release date for an eligible defendant. These are rules governing the courts of the State of New Jersey, these rules are to be followed. The prosecutor also has a role to protect the constitutional rights of the target of the investigation (me) (17:2 rule of the prosecutor)



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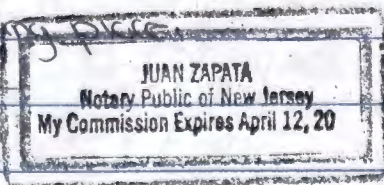
Writ OF Habeas corpus continuance

The failure of the prosecutor to comply with the basic restrictions may result in the dismissal of a charge and an indictment.

The prosecutor did not protect my constitutional rights, and for all these facts giving all charges and indictment brought against me, should be dismissed due to the substantial and unreasonable delay, which violated my constitutional rights, this is substantive and procedural (Due process) void proceedings cannot be made void; indictment is a critical stage in a criminal proceeding, and the time the prosecutor had to indict me extremely surpassed. The prosecutor had put in a motion to vacate and take back the original plea deal, which was a (3) year sentence with a (1) year stipulation, I say this to say that the prosecutor made her intentions known by vacating the plea, so the moment that the motion was filed, there shouldn't have been any type of delay, on indicting me, which has caused serious constitutional right issues. This has also caused me time and deprived me of adequately preparing myself to defend myself against prosecution, because I was under the impression that I relieved and was giving the plea deal which was the (3) with a (1) year stipulation, and me not being indicted caused me not to have a full and complete discovery, during the whole duration of my (incarceration) to actually see what I am charged with and also up against fully, but yet we are still proceeding with these matters without the proper procedures and

Steps taken please.

*[Signature]*  
D8892022



*Shahid Sharif*